IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.1390/07
Chatra Vs. Board of Revenue & Ors.

2.5.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri V.K. Jain for petitioner.

Heard learned counsel for the petitioner.

Challenge in this petition has been made to the judgment dated 29.8.2006 passed by the Board of Revenue, Ajmer whereby the Board while allowing the appeal of the respondents against the judgment of the Revenue Appellate Authority, Kota dated 18.6.01, set aside the judgment and decree dated 2.5.01 passed by the SDO, Kota and remanded the matter for deciding the same afresh in

conformity with the provisions of Order 18 Rule 1 and 2 CPC and Sections 101 to 114 of the Indian Evidence Act, 1872. The plaintiff petitioner Chatra Ram had filed a revenue suit under Section 88 and 188 of the Rajasthan Tenancy Act against the defendants respondents pleading that land bearing khasra no.790/302 was entered as Rakba 27 bigha 16 biswa in the Samwat 2013 to 2016 and after settlement it was given a new number 307 was entered as rakba with only 17 biswa, whereas it should have been 27 bighas. Thus 10 bighas and 16 biswas land was wrongly made part of the khasra no.312 and illegally recorded in the khatedari of the defendants whereas the fact was that still the plaintiff was in possession of 25 bighas and 16 biswas of land. This was a mistake committed by settlement because father of the defendant

had only 20 bighas and 11 biswas whereas they have wrongly been given 30 bighas of land. It was therefore prayed that the revenue records be suitably corrected to enter only 27 bighas and 16 biswas of land in khasra no.307 and the defendants be restrained form making any kind of interference with the peaceful possession and enjoyment of that land by the plaintiff. Aforesaid suit was decreed by the learned trial court against which appeal was filed by the defendant. The Revenue Appellate Authority by his judgment dated 18.6.01 upheld the judgment. It is against these two judgments that the respondents approached the Revenue Board which passed the impugned judgment on 29.8.06. Hence the writ petition.

Learned counsel for the petitioner

argued that the Board of Revenue committed a serious error of law by not deciding the matter on merits and remanding the same back to the SDO, Kota. The Board did not take into consideration that when the matter was pending before the SDO for evidence of the plaintiff, the SDO called for the factual report from Tehsildar Pipalda. This report was received at the time when the matter was fixed for final arguments. The defendants never insisted on producing evidence and they agreed to argue the matter for final disposal. It cannot be therefore said that any irregularity was committed by the SDO in deciding the matter. The respondents having not raised objection at the appropriate time, cannot now raise objections at this belated stage about any procedural irregularity. The revenue suit

of 1990 as it is, was decided by the SDO after more than a decade on 2.5.01 and a suit of 1990 having got decided in 2001, judgment rendered therein could not have been so lightly interfered with by the Board after 15 years now.

Having heard the learned counsel for the petitioner and perused the material on record, I find that the learned Board of Revenue in its order has noted that the SDO had framed as many as eight issues on 20.11.90. Issue no.8 was pertaining to the fact whether the defendants had forcefully taken possession of the part of the land of the plaintiff. The Board of Revenue noticed that the suit of the plaintiff has been decided by the SDO merely on the basis of report of the Court Commissioner. On perusal of the order sheet, the Board noticed that while

statements of PW-1 Chatra and PW-2 Daya Ram, both plaintiffs, were recorded on 20.11.91 and thereafter matter was deferred for evidence again on 15.11.99. On application of the counsel for the plaintiff filed under section 151 CPC read with Order 26, Rule 10 CPC on 27.5.2000 for appointment of the Court Commissioner, the SDO passed an order on 13.9.02 directing that Tehsildar Pipalda who went and inspected the site of the dispute and submitted his report and thereafter the matter was fixed on 9.4.2001. It was noticed that the report has been received and matter was then straight away taken up for final arguments on 2.5.01. The Board of Revenue therefore found that no opportunity was given to the defendants for producing their evidence, not even any date was fixed for recording their

evidence. It is in this background that the Board while remanding the suit again to the SDO directed that the matter should be proceeded from the stage of recording of evidence of defendant in accordance with provisions of Order 18 Rule 1 and 2 CPC read with Section 101 to 114 of Indian Evidence Act and then fresh order on the merits of the case be passed. The manner in which the revenue suit was conducted by SDO noted leaves much to be desired. I do not find any error in the approach taken by the Board by remanding the matter to SDO again for deciding it in accordance with law. But their appears to be some substance in what the learned counsel has argued that the revenue suit which was filed in the year 1990 as it took 11 years to get decided and 5 more years having subsequently been added thereto, now it is

16 years. Since the plaintiff filed the suit, his anxiety that even after remand the revenue suit may not be decided for years together may not be wholly unfounded.

In the context of all these facts, I deem it appropriate to direct the SDO to proceed with the aforesaid revenue suit and decide the same as expeditiously as possible, but in no case later then six months from the date copy of this judgment is produced before him.

(Mohammad Rafiq),J.

Rs/-